IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.587 OF 2006

Rajeev Chandra ...Petitioner.

Versus

The Trustee/Dean of the
ICFAIAN Foundation, ICFAI
Business School, Pune & Ors. ...Respondents.

Shri M.J.Jamdar for the Petitioner.

Shri Bhave i/b M/s Bhave & Co. for Respondent Nos.1 to 3.

CORAM : S.C.DHARMADHIKARI,J.

DATE : 21st FEBRUARY, 2006.

P.C. :

1. Heard Shri Jamdar - learned Counsel appearing for the petitioner-original plaintiff and Shri Bhave - learned Counsel appearing for respondent Nos.1 to 3.

2. In Regular Civil Suit No.1193 of 2003, the petitioner-plaintiff applied for amendment because on earlier occasion, he was told that he claims to be in the employment of a Trust (ICFAIAN Foundation), but, the said Foundation has not been joined as party-defendant to the Suit. It is in the light of the observation of this Court during the course of challenge to an order below Exh.5 in this Suit that the

above observation was made and which compelled the petitioner to apply for amendment of the plaint by the instant application.

3. The defendants (respondents before me) opposed the said application on the ground that altogether new defendant is being substituted and that would change the cause of action. No amendment should be granted which would permit lacunas in the pleadings to be filled-in.

4. The trial Court has dismissed the application for amendment. The trial Court has not observed that there is any vested right accruing in the parties which is being taken away. As to how deleting present defendant and adding the above foundation as defendant will change the nature of the Suit as well as cause of action is not clear to me, at all. All that has been done by the petitioner-plaintiff is bringing on record a Foundation, who has employed him and where he was working at the relevant time. Such amendment does not in any manner take away the right of the respondents to contend that the lacuna still remains and the Suit be dismissed.

5. Similarly, all other pleas on merits are also

not affected. The formal application for amendment in the light of observations of this Court should have been granted.

6. In view of the above, the impugned order is set-aside. The application for amendment is granted. Amendment to be carried out within a period of two weeks from today. Amended plaint to be served on the respondents within a period of four weeks thereafter. It wold be open for the newly added defendant and respondents to file written statement/additional written statement and same should be filed within a period of six weeks from the date of receipt of amended plaint. The petitioner to pay costs of the amendment quantified at Rs.1500/- (Rs.Fifteen Hundred Only), as a condition precedent. Petition allowed.

(S.C.DHARMADHIKARI,J.)